

GIL GUTKNECHT  
1ST DISTRICT, MINNESOTA



**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-2301

September 2, 2003

The Honorable John W. Snow  
Secretary, Department of the Treasury  
1500 Pennsylvania Avenue Northwest  
Washington, D.C. 20220

Dear Secretary Snow:

As the enclosed *Wall Street Journal* article indicates, you and your department will soon make some very important decisions concerning pension conversion policy.

I write as a former member of the Minnesota State Legislature's Pension Commission and as a Representative of over 8,000 IBM employees and retirees. I have a better understanding of this issue than the average Member of Congress.

If you look in a dictionary, you will find the definition of the term "vested" to be:

**vested.** *adj.* 1. Settled, fixed, or absolute; being without contingency: *a vested right.*

The central problem, in my view, is that employees who had been told their pensions were "vested" suddenly learned that there is no real definition of that term.

The frustration is exacerbated by the fact that top management of IBM and other companies elected to help themselves to more generous pension plans, while their employees were converted to cash balance programs. The sauce for the goose should be the sauce for the gander. Federal judges didn't need to be bloodhounds to pick up on the foul odor of this. It doesn't pass the smell test!

Permit me to suggest a compromise. Give vested employees a choice. Companies will be managing their original plans for years to come anyway. This would add only a few more. Without some compromise, this legal battle will boil over into a red-hot political battle. The Bush Administration will find itself defending the indefensible. I would be happy to discuss this further.

Sincerely,

Gil Gutknecht  
Member of Congress

Enc.

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**TIAA - KREFF**  
*handout*

6. Do contributions continue while I'm on active duty in the Armed Forces?

If you are absent from employment by reason of service in the uniformed services of the United States, once you return to actual employment, the Institution will make those contributions to the Plan that would have been made if you had remained employed at the Institution during your period of military service to the extent required by law.

7. When do my plan contributions become vested (i.e., owned by me)?

You are fully and immediately vested in the benefits arising from contributions made under this Plan. Such amounts are nonforfeitable.

8. How are years of service counted?

You are credited with a year of service for each 12-month period (computation period) during which you complete 100 or more hours of service.

Hours of service will be determined on the basis of actual hours that you are paid or entitled to payment.

For purposes of determining your eligibility to participate, the computation period starts with your date of employment or anniversary of your employment date.

9. When does a "break in service" occur?

A break in service occurs if you are not credited with at least 1 hour of service during the 12 month computation period. For certain maternity or paternity leaves, you will be credited with enough service to prevent a break in service but only during the first year you work less than 1 hour due to maternity or paternity leave.

10. What is the normal retirement age under the Plan?

The normal retirement age under the Plan is age 65. Annuity income usually begins on the first of the month following that date.

11. When does my retirement income begin?

Although income usually begins at normal retirement age, you may begin to receive annuity income at any time, which may be either earlier or later than the normal retirement age.

In addition to any other Plan provision, any Institution Plan contributions made on your behalf to satisfy the requirements of IRC §401(m) and salary reduction contributions (and any earnings) to an annuity contract after December 31, 1983 may be withdrawn only when you attain age 59 1/2, terminate employment, die or become disabled.

Retirement benefits must normally begin no later than April 1 of the calendar year following the year in which you attain age 70 1/2, or, if later, April 1 following the calendar year in which you retire. Failure to begin annuity income by the required beginning date may subject you to a substantial federal tax penalty.

If you die before the distribution of benefits has begun, your entire interest must normally be distributed by December 31 of the fifth calendar year after your death. Under a special rule, death benefits may be payable over the life or life expectancy of a designated beneficiary if the distribution of benefits begins not later than December 31 of the calendar year immediately following the calendar year of your death. If the designated beneficiary is your spouse, the commencement of benefits may be deferred until December 31 of the calendar year that you would have attained age 70 1/2 had you continued to live.

The payment of benefits according to the above rules is extremely important. Federal tax law imposes a 50 percent excise tax on the difference between the amount of benefits required by law to be distributed and the amount actually distributed if it is less than the required minimum amount.

# Not Your Father's Pension

Review & Outlook, *The Wall Street Journal*  
August 25, 2003

IBM and Xerox have become the latest companies caught in a special type of pension hell. Both companies had converted to what are known as "cash-balance" plans and have lost court cases on their operation. The irony is that this kind of litigation is causing companies to throw in the towel on traditional pensions altogether.

To review some terms, "defined-benefit" refers to traditional pension plans in which companies offer a certain payment upon retirement. A "defined-contribution" plan is like a 401(k), in which a company makes a contribution each year a worker is employed, and the "pension" at retirement is whatever amount has built up over the course of a career.

Cash-balance plans are a hybrid of the two. Typically, a cash-balance plan credits workers with a percentage of pay each year, plus interest. At retirement, workers can convert their accounts into a lump sum payment or an annuity (paid out over many years). Workers who leave the company before retirement age receive a lump sum consisting of credit for pay already earned and projected interest payments.

The plans were designed to counter two problems with traditional defined-benefit plans. Employees -- especially younger ones -- objected to traditional plans because of inadequate portability and because benefits are backloaded. Accruals are smaller during early years but accelerate as workers near retirement.

For their part, companies (especially publicly-traded ones) were unhappy with the volatility involved in funding traditional plans. Contributions can vary from year-to-year, and even quarter-to-quarter, creating uncertainty in financial planning and potentially wide swings in earnings. The cash-benefit solution was supposed to offer more portability and faster funding for workers, as well as more predictable, smoother funding for companies. Sounds like a win-win, right?

Wrong. At least for some people. Cash-balance plans change the way pension wealth is spread among employees. The plans favor equity across-the-board, which is better for most employees, but does come at the expense of certain groups. For example, because benefits under the traditional formula are backloaded, cash-balance plans are worth more to younger workers than to older ones.

This was the essence of the complaint against IBM; workers claimed its cash-balance plan discriminates against older workers. If the federal court ruling stands (IBM says it will appeal), the company will have to recalculate benefits for 130,000 workers and retirees. In the Xerox case, the court found that the company had miscalculated lump sum payouts and will have to pay more than \$270 million to former employees.

Cash-balance plans are a recent invention and there hasn't been much regulatory guidance on their design. The IRS, which must approve new plans, has stopped issuing letters of qualification, waiting for Treasury to issue final rules. Treasury has promised that it will rule on a number of issues by the end of the year and has indicated that it will support cash-balance plans and find them not to be age-discriminatory. But meanwhile, this official silence has exposed companies adopting cash-balance plans to lawsuits.

Until the legal limbo is cleared up, companies have little incentive to convert traditional plans to cash-balance ones. Some are freezing their defined-benefit plans or ending them in favor of defined-contribution plans. The private pension system is after all voluntary. No company is obligated to continue offering any specific plan. Although benefits already earned are protected by law, employers do have the right to reduce the rate at which benefits are earned in the future.

We have nothing against any of these pension plans, since they're a matter of choice among consenting adults. Younger workers in particular seem to like defined-contribution plans, which give them immediate control over their own investments and can be rolled over from job to job.

But we also recognize that many workers like traditional pensions. They offer a contract in which employers assume the investment risk of a definable benefit that is more or less backed-up by the federal government. It'd be a shame for these workers if their litigious colleagues close out this opportunity.

# House Moves to Prevent Proposed Pension Rules

By Ellen E. Schultz and Theo Francis, The Wall Street Journal  
September 10, 2003

In an unexpected move that involved possibly doctored Treasury documents, an expensive full-page advertisement in the New York Times and a lot of heat over cash-balance pension plans, the House passed an amendment that could prevent the Treasury from issuing controversial pension regulations.

Rep. Bernie Sanders, a Vermont independent, offered the amendment, which was tacked on to an appropriations bill, to stop the Treasury from issuing final regulations on cash-balance pension plans -- regulations that have been on the drawing board for more than 15 years. The vote passed 258 to 160, with 65 Republicans and 192 Democrats in favor.

Cash-balance plans are controversial because they usually cut pensions for older workers. In late July, a federal district court in Illinois concluded that International Business Machines Corp.'s cash-balance plans had discriminated against older workers.

Mr. Sanders and his co-sponsors, who include Reps. Gil Gutknecht (R., Minn.), George Miller (D., Calif.) and Maurice Hinchey (D., N.Y.), say the Treasury regulations would have reversed the court's decision in the IBM case. "The court found that IBM knew that older workers would lose up to 47% of their pensions under the cash-balance conversion," Mr. Sanders said. "Now the Treasury is about to help employers make an end run around the courts and illegally cut pensions."

Although the final regulations haven't been issued, the Treasury is widely viewed as sympathetic to employers in pension matters, and in December issued proposed regulations that said cash-balance plans wouldn't be subject to age-discrimination rules.

Hundreds of large employers have adopted cash-balance plans, which usually save companies money by cutting pensions for older workers, and indirectly boost earnings by cutting pension liabilities.

The adverse decision in the IBM case alarmed employers, which are seeking favorable regulations from the Treasury, which they hope will aid them in their cases in the courts.

On Monday, an IBM lobbyist, Susan M. Siemietkowski, sent a document she called the "Treasury's statement of opposition" to various lawmakers' staffs, including Mr. Gutknecht. The Treasury document, on official Treasury letterhead, noted "Treasury Strongly Opposes the Sanders Amendment" and advised lawmakers to oppose the amendment, which it said "will weaken the defined benefit system."

Tara Bradshaw, a spokeswoman for the Treasury, said the agency didn't issue the document. "It is a Treasury generated fact sheet stating our position on a set of [past] amendments that were never offered. However, they were not sent in the format you provided and, therefore, appear to have been doctored."

She said the Treasury had prepared an earlier document pertaining to an amendment offered by Mr. Sanders last year, but that the original document was "designed for informational purposes and was not formally released," she said. "We were not aware the document had been circulated beyond a very limited number of select staff."

IBM spokesman Bill Hughes said, "We received the document from the Erisa Industry Committee, and we understand that it was prepared by Treasury and distributed to members of the House last week. We believe that the document was not changed from what the Treasury distributed." He added, "We're doing everything we can to get to the bottom of this."

The IBM lobbyist also sent lawmakers a document titled "IBM-Wash Post.doc," which included text that appeared Tuesday, in full-page ads in the New York Times and the Hill, a daily newspaper for members of Congress and their staffers.

The Microsoft Word document labeled its creator as Richard C. Shea, a lawyer at Covington and Burling, which is defending IBM's case.

When asked if he wrote the advertisement, Mr. Shea said no. When told that his name was attached to the document, he said he was aware of "various versions" of the ad "floating around," and said he didn't write it. He declined to say whether he was involved in the ad campaign, saying one of its sponsors was a client and hadn't authorized him to discuss it. "It's possible someone took a document I had originally drafted and prepared a new one on top of it," he said.

The ad carried the headline "Don't Destroy America's Pension System," and said the Sanders amendment would "outlaw vast numbers of pension plans." It was signed by a handful of lobbying groups, including the Erisa Industry Committee and the American Benefits Council, lobbying groups to which IBM belongs, and paid for by Erisa Industry Groups. Also listed was the Coalition to Preserve the Defined Benefit System, an employer lobbying group. The Web site for the coalition doesn't identify its members. However, the site's address is registered to Watson Wyatt, a consulting firm that is IBM's actuary, and which helped it implement its cash-balance plan.

When asked about Watson Wyatt's relationship to the coalition, Eric Lofgren, global director of the firm's benefits-consulting group, says Watson Wyatt was "in at the birth" of the coalition "with a bunch of employers," and functions as an adviser to the group.

Last year, Mr. Sanders offered a similar amendment, which passed the House 308-121, with most Democrats and 47% of Republicans voting in favor; it ultimately was stripped from the final bill.

Sen. Thomas Harkin (D., Iowa) also is expected to introduce a limitation amendment aimed at preventing the Treasury from issuing cash-balance regulations. If the reconciled amendments ultimately pass, the final regulations on cash-balance plans won't come out for another year.